

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3037 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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SHIVRAJ HARDWAR GADHAVI

Versus

T S RANDHAWA IAS OR HIS SUCCESSOR

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Appearance:

MR YS MANKAD for Petitioner

MR PREMAL JOSHI for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/08/2000

ORAL JUDGEMENT

#. The petitioner challenges the notice dated 27th March 1992 issued by the respondent No.1 - Collector, Kutchh, initiating suo-motu revisional proceedings under Section 211 of the Bombay Land Revenue Code in respect of the

order made on 29th June 1984, by the Mamlatdar, Abdasa, under Section 37(2) of the Code in Case No.41 of 1984 by which it was held that the land of Survey No.317 admeasuring 12 Acres and 12 Gunthas of the village Karodia Mota, Taluka: Abdasa, was ancestral land of the petitioner and that necessary entries should be made on that basis.

#. In Case No.41 of 1984, admittedly, these very lands were the subject matter of controversy and the Mamlatdar, on the basis of the material on record, came to a finding that these lands were ancestral "GHARKHED" lands of the petitioner and that they were not lying fallow during the period 1956-57 to 1960-61. That order came to be taken up in suo-motu revisional jurisdiction by the Deputy Collector, who set it aside on 12th June, 1989. The Collector, Kutchh, in the Appeal filed by the petitioner, confirmed the order of the Deputy Collector on 9.4.1990. In revision application filed by the petitioner before the Government, it was held that revision application would, in such matters, lie before the Tribunal. The petitioner therefore approached the Tribunal and the Tribunal, by its order dated 19.3.1991, held that the order of the Mamlatdar dated 29.6.1984 passed under Section 37(2) of the Code could not have been taken in suo-motu revisional jurisdiction by the Deputy Collector after a lapse of four years. The order of the Deputy Collector and the order of the Collector, confirming that order, were therefore set aside as a result of which, the order of the Mamlatdar stood restored in favour of petitioner. After the Tribunal's order dated 19th March, 1991, copy of which is at Annexure-F, to the petition, the Collector, Bhuj, has issued the impugned show cause notice dated 27th March 1992 in respect of the same land again purporting to exercise revisional jurisdiction under Section 211 of the Code.

#. It was contended on behalf of respondents that this time, it was the Collector who had initiated the revisional jurisdiction under Section 211 of the Code while earlier, it was the Deputy Collector who had done so. Such a contention can hardly be countenanced because the order dated 29.6.1984 of the Mamlatdar which was the subject matter of the earlier attempted suo-motu revisional jurisdiction by the Deputy Collector was also the subject matter in an Appeal which was filed by the petitioner before the Collector against the decision of the Deputy Collector and the orders of the Deputy Collector and Collector were both set aside by the Tribunal on the ground that such suo-motu revisional jurisdiction could not have been invoked after a lapse of

four years against the order which was made by the Mamlatdar on 29.6.1984 in favour of the petitioner. It is obvious that the decision of the Hon'ble the Supreme Court in State of Gujarat v. Raghav Natha, reported in X GLR 992 was in the mind of the Tribunal when it observed that the revisional jurisdiction could not have been exercised after a lapse of four years. The Hon'ble Supreme Court, in Raghav Natha's case (supra), held that though there was no period of limitation prescribed under Section 211 of the Code, it was plain that the power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order. After the Tribunal had finally adjudicated upon the issue, the Collector had absolutely no jurisdiction to re-open the same matter by purporting to exercise suo-motu revisional powers again. The impugned show cause notice is therefore clearly without jurisdiction and cannot be sustained. The impugned notice dated 27th March 1992 at Annexure-G to the petition is therefore hereby set aside. Rule is made absolute accordingly with no order as to costs.

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(sunil)